

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

BRADLEY J. SCHAUFENBUEL; et al.,)	
)	
Plaintiffs,)	
)	Case No. 09-CV-1221
v.)	
)	
INVESTFORCLOSURES FINANCIAL, L.L.C.; et al.,)	Judge Leinenweber
)	
)	Magistrate Judge Nolan
)	
Defendants.)	

MOTION FOR EXPENSES AND FEES FOR FAILURE TO WAIVE SERVICE

NOW COME Plaintiffs, by and through their attorneys Thurston Law Offices, P.C. and Law Offices of Joel M Weiner, LLC, and pursuant to Fed.R.Civ.P. 4(d)(2) hereby respectfully move this honorable Court to impose costs and attorneys' fees on Defendant Realty Opportunities International S. de R.L. de C.V. ("ROI Mexico") for failure to waive service. In support of their Motion, Plaintiffs state as follows:

1. The Federal Rules of Civil Procedure provide in pertinent part that "An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons." Fed.R.Civ.P. 4(d)(1). Rule 4(d)(1) continues to provide the procedures by which waiver of service may be requested.

2. On February 27, 2009 and in accordance with Federal Rule of Civil Procedure 4(d)(1), Plaintiffs sent the appropriate paperwork to have Frank Sanchez ("Sanchez"), as CEO, waive service on behalf of ROI Mexico. (Certification of Robert C. Thurston, ¶11.)

3. Despite sending the waiver form and appropriate documents, ROI Mexico failed to waive service. (Certification of Robert C. Thurston, ¶¶2-5.)

4. Plaintiffs hired a private process server to effectuate service upon ROI Mexico, which took several attempts at 3 different addresses. (Certification of Robert C. Thurston, ¶¶6-7, 9-10, and 12-13 and Exhibit D thereto.)

5. ROI Mexico was successfully served through Sanchez, its CEO, by the private process server on April 20, 2009. (Certification of Robert C. Thurston, ¶13 and Exhibit D, page 3.)

6. The Federal Rules provide that "If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant: (A) the expenses later incurred in making service; and (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses." Fed.R.Civ.P. 4(d)(2) (emphasis added.)

7. Plaintiffs were charged \$180.00 by the private process server for all of the attempts and finally successful service upon ROI Mexico, which costs could have and should have been avoided. (Certification of Robert C. Thurston, ¶¶8, 11, and 14 and Exhibit E thereto.)

8. Prior to filing the present motion, Plaintiffs' counsel requested that ROI Mexico reimburse Plaintiffs for such costs for failure to waive service, but ROI Mexico has refused to respond to such requests. (Certification of Robert C. Thurston, ¶¶15-17 and Exhibits F and G thereto.)

9. After leave is granted by this Court, Plaintiffs' counsel will submit an Affidavit of attorney's fees and expenses for making this motion on behalf of Plaintiffs. (Certification of Robert C. Thurston, ¶18.)

WHEREFORE, Plaintiffs respectfully request that this honorable Court grant their Motion for Expenses and Fees for Failure to Waive Service against Defendant Realty Opportunities International S. de R.L. de C.V. ("ROI Mexico") and order that ROI Mexico pay Plaintiffs \$180.00 for the private process server plus attorneys' fees and expenses and that Plaintiffs' counsel is granted leave to file an Affidavit of fees and expenses for making this motion.

Respectfully submitted,
PLAINTIFFS

By: /s/ Robert C. Thurston
One of Their Attorneys

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